

### REMARKS

After amendment, the pending claims are 81 and 104-108.

Applicant hereby cancels all other claims from the application, including the previously pending, non-elected Claims 11, 16, 17, 19, 21, 22, 31-33, 38, 47-49, 51-53, 66-72, 82, 84-90, 97-99, and 101. Applicant reserves the right to prosecute the canceled claims in a divisional application filed during the pendency of the present application. Claims 81 and 104-108 are amended to correct claim dependencies, clarify the subject matter of the invention and place the application in condition for allowance. The claims are renumbered pursuant to 37 CFR § 1.126, as kindly suggested by the Examiner. No new matter is added by these amendments.

### Renumbering of Claims

The Examiner has asserted that the numbering of new claims 103-107 is not in accordance with 37 CFR § 1.126. The Examiner has indicated that misnumbered claims 103-107 were renumbered as claims 104-108.

Applicant has included the renumbering of the claims in the present Response. Applicant has also corrected the dependency of claims 81 and 105-108 to depend from claim 104.

### 35 USC § 112, Second Paragraph Rejections

- A. The Examiner has rejected claim 11 under 35 USC § 112, second paragraph and has asserted that the phrase "the p39.5 protein" is indefinite and lacks antecedent basis.

Applicant respectfully requests reconsideration and withdrawal of this rejection. In an effort to place the application in condition for allowance, Applicant has canceled claim 11. Withdrawal of this rejection is requested.

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- B. The Examiner has rejected claim 81 and claims 104-108 under 35 USC § 112, second paragraph. The Examiner has asserted that it is unclear what is the identity of the new amino sequence because of the indefiniteness of where the codon changes occur and because the change in even one codon may shift the reading frame, resulting in an unknown amino sequence.

The Examiner has also asserted that the phrase "reacts with antibodies" in claim 104 is unclear and should be replaced with the phrase "peptide that binds with antibodies".

Applicant respectfully requests reconsideration and withdrawal of this rejection for the following reason. In an effort to place the application in condition for allowance, Applicant has deleted section (g) from claim 104, which removes the language regarding codon changes. Further, pursuant to the Examiner's suggestion, Applicant has deleted the term "reacts" in claim 104 and replaced the same with "binds". Claim 81 has been amended to depend from claim 104.

In view of these amendments, the rejection is believed to be satisfied. Reconsideration and withdrawal of this rejection is requested.

### **35 USC § 112, First Paragraph Rejection**

The Examiner has rejected claim 81 under 35 USC § 112, first paragraph and has asserted that there is no requirement for the codon changes to be at any particular position in the DNA encoding SEQ ID NOS: 2, 3, 7, 11, 13, or fragments thereof.

Applicant respectfully requests reconsideration and withdrawal of this rejection due to the above amendment to claim 104 from which claim 81 depends, which amendment deletes the language regarding codon changes. This amendment is believed to satisfy this rejection.

Reconsideration and withdrawal of this rejection is requested.

### **35 USC § 102 Rejection**

The Examiner has rejected claims 11, 81, and 104-108 under 35 USC § 102 (a) over Zhang et al. (Cell, 89:275-285, April 1997).

The Examiner has asserted that there was no direct statement in the Declaration stating that the reduction to practice/completion of the invention was in a NAFTA or WTO member country, or the United States prior to the effective date of the cited reference.

Applicant respectfully requests reconsideration and withdrawal of this rejection for the following reason.

The Rule 131 Declaration filed on December 10, 2002 recited that the conception and reduction to practice of the invention in this application was in the United States. See, page 1, section 2, of the filed Declaration. However, in an effort to place the application in condition for allowance, Applicant has forwarded herewith a re-executed and amended Declaration under Rule 131, which provides a statement under signature of the invention that the evidence of conception and reduction to practice of the claimed invention occurred in the United States, a NAFTA country, or a WTO member country prior to the publication date of Zhang. Reconsideration of this rejection is requested.

#### **Nonelected Claims**

The Examiner has asserted that the application contains claims 16, 17, 19, 21, 22, 31-33, 38, 47-49, 51-53, 66, 68-72, 82, 84-90, 97-99, 101, and 103 which are drawn to a nonelected invention.

In an effort to place the application in condition for allowance, Applicant has canceled all claims but 81, 104-108, including Claims 11, 16, 17, 19, 21, 22, 31-33, 38, 47-49, 51-53, 66-72, 82, 84-90, 97-99, and 101. Applicant reserves the right to prosecute these claims in a divisional application filed during the pendency of the present application.

No fee is believed due with this amendments. However, the Director is hereby authorized to charge any deficiency in any fees due with the filing of this paper or credit any overpayment in any fees to our Deposit Account Number 08-3040.

Respectfully submitted,

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